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plaintiff must be presumed to have trusted to the safety of his place of deposit and the honesty of the clerk, rather than the responsibility of the defendants.

I am, therefore, of opinion the defendants are only liable for the amount lost by the plaintiff equal to his travelling expenses, as found by the jury; the general verdict, which is controlled by such special finding, must be reduced to that sum, and the exceptions as to the amount beyond that sustained; the other exceptions, being untenable, must be overruled and judgment rendered for the amount so found.

GARVIN, J., concurred. McCUNN, J., dissented.

Circuit Court of the United States for the Western Circuit of Pennsylvania.

MAYOR, ETC., OF BALTIMORE vs. THE CONNELLSVILLE AND S. PENN.
RAILROAD COMPANY.

If in an act of incorporation, the legislature of a state retains the right to revoke the grant of the charter, either absolutely, or whenever in its opinion the company misuses its privileges, the latter or its members cannot complain of the exercise of the power of revocation.

But where the right to revoke was only in case the corporation should misuse or abuse its privileges, the fact of such misuse if denied by the corporation should be established by competent proceedings.

An act declaring a revocation without the establishment of such fact is unconstitutional.

The charter of the Pittsburgh and Connellsville Railroad Company contains the following provision, viz.: "If the said company shall at any time misuse or abuse any of the privileges herein granted, the legislature may resume all and singular the rights and privileges hereby granted to such corporation."

Under this clause the legislature, by an act passed in 1864, revoked and resumed all and singular the rights and privileges granted to said company, so far as the same authorized it to construct any line or lines of railway southwardly or eastwardly from Connellsville.

The opinion of the court was delivered, July 18, 1865, by
GRIER, J.—Is this repealing act repugnant to the constitution of the United States, on the ground that it impairs the obligation of the contract between the state and the company?

The objections made on the argument to the form of the pleadings and the right of the complainant to have the remedy sought in his bill, will be found overruled in a similar case by the Supreme Court. We refer to the case of *Dodge vs. Wolsey*, 18 How. 336. In that case the complainant was a stockholder in the corporation, whose interests were likely to be injuriously affected by the state legislation, if it should be carried into effect. In this case the complainant is a creditor, who, on the faith of legislative acts, granting certain franchises and privileges to the Pittsburgh and Connellsburg Railroad Company, has advanced large sums of money, which have been expended in constructing their road. If that corporation submit to this act of the legislature, divesting them of a most valuable part of their franchises, the security and rights of the complainant would be materially injured. The bill is in the nature of a bill *quia timet*, and the complainant has a right to the remedy sought, if the court should be of opinion that the act of 1864 impairs the obligation of the original contract, or act of incorporation granted to the Pittsburgh and Connellsburg Railroad Company.

The only question, then, is as to the validity of this act. That the act repealing the franchises of the corporation, or a material part, and transferring its franchises and property to another corporation without its consent, impairs the obligation of the original contract, is not, and cannot be denied. Nor is it denied that an act granting corporate privileges to a body of men who have proceeded on the faith of it to subscribe stock and borrow money, and expend it in the construction of a valuable public improvement, is a contract, and that it is not in the power of either party to it to repudiate or annul it without the consent of the other.

The state claims no sovereign power to repudiate its contracts or defraud its citizens, and the constitution delegates no such power to the legislature.

If in the act of incorporation the legislature retains the absolute and unconditional power of revocation for any or no reasons; if it be so written in the bond, the party accepting a franchise on such conditions cannot complain if it be arbitrarily revoked; or if this contract be that the legislature may repeal the act whenever in its opinion the corporation has misused or abused its privileges, then the contract constitutes the legislature the arbiter and judge of the existence of that fact.

But the case before us comes within neither category. The

contract does not give an unconditional right to the legislature to repudiate its contract, nor is the legislature constituted the tribunal to adjudge the question of fact as to the misuse or abuse. Moreover, the case before us admits that the condition of facts upon which the legislature are authorized to repeal the act, does not exist. It admits that the corporation has neither "misused or abused its privileges." A charter may be vacated by the decree of a judicial tribunal in a proper proceeding for that purpose, without any such reservation in the act. Then both parties are heard and a verdict of a jury on the facts can be obtained, which concludes the question. But the legislature possesses no judicial authority under the constitution, and has no established course of proceedings in the exercise of such power.

The party who is injured by its action is not heard. The reasons usually alleged in the preamble to such acts are the mere suggestions of some interested party, seeking to speculate at the expense of others—professional solicitors who infest the lobby are ever ready, for a sufficient consideration, to impose on the good nature of honest but often careless legislators, by the suggestion of any necessary falsehood.

If any one should feel curious as to the methods used by agents of corporations to obtain such legislative acts as may be desirable, they will find them fully exposed in the opinion of the Supreme Court delivered in the case of *Marshall vs. Baltimore & Ohio Railroad Company*, 16 How. 333.

We do not intend even to insinuate that any such *secret service* by "skilful and unscrupulous agents" "stimulated to active partisanship by the strong lure of high profits" to use "most efficient means" to get the vote "of the careless mass of legislators," have been used in this case. But we do say that the recitals in the preamble to this act exhibit a labored attempt to justify a more than doubtful exercise of power by an array of reasons which, even if true in fact, might be demurred to in law as insufficient.

The act does not contemplate the exercise of the right of domain by which the property of individuals or corporations may be taken for some public use on making ample compensation. Its object is to transfer the franchises and property of one corporation, anxious by every means in its power to complete a valuable public improvement, to another whose interest is *not* to complete the road, and who are not required to do so at any time in this or the next century. Where in a case like the present the legislature

are asked to take the property of one corporation and give it up to another on the ground that one has abused or misused its privileges, the just and proper mode would be to pass a resolution ordering the Attorney-General to institute the proper legal proceedings to ascertain the fact of "misuse or abuse." If such issue be found true then that the charter be revoked or resumed. We do not say that without such judicial proceeding ascertaining the existence of the condition in which the right of repeal is reserved, the act is absolutely void; *but we do say* that in all such cases the party injured, if he denies the existence of such "misuse or abuse," has a right to be heard, and to have that question tried before he shall surrender his property or his franchise. We do not think it necessary to notice the numerous and conflicting cases which have been brought to our notice by the learned counsel.

In the case of *Erie & N. East R. R. vs. Casey*, 26 Pa. and 1 Grant, the court found, after a full hearing of the parties, that the fact of "misuse or abuse" did exist, and therefore the act was not void.

It cannot, therefore, be any precedent for a case which admits that such facts do not exist. The principles of law, so far as they affect this case, are very clearly and tersely stated by Chief Justice LEWIS, in his opinion to be found in 1 Grant 275, with a review of the cases and a proper appreciation of that from Iowa.

The sum of the whole matter is this:—

1. The complainant has shown a proper case for the interference of the court in his favor.
2. That the act complained of is unconstitutional and void under the admissions of the case.
3. The complainant is entitled to the decree of the court on the pleadings as they stand.
4. That the defendants have leave to withdraw their demurrer and answer over; and if they shall so request, an issue will be ordered to try whether the Pittsburgh and Connellsville Railroad have misused or abused their charter.

McCANDLESS, District Judge, concurred.